Supreme Court, U.S.
FILED
JUL - 6 1994
OFFICE OF THE CLERK

CASE NO. 94-36

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

CHARLES M. ANDERSON

Petitioner

vs.

MARC A. BUSMAN, et al

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF VIRGINIA

PETITION FOR CERTIORARI

CHARLES M. ANDRSON
8401 Cathedral Forest Dr.
Fairfax Station, VA.
Petitioner Pro Se

20 pp

QUESTION PRESENTED FOR REVIEW

I

Whether Petitioner can be sanctioned for non-payment of a sanction order and sentenced to a jail term for non-payment of the secondary monetary sanction without consideration of his ability to pay.

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JURISDICTION

The Supreme Court of Virginia refused Petitioner's Petition for Appeal of order entered May 6, 1993 on November 1, 1993. The Supreme Court of Virginia granted Appellees' Motion to Dismiss Petitioner's non-existent Petition for Appeal of order entered November 19, 1993 on April 8, 1994.

The Judgment sought to be reviewed was entered May 6, 1993.

The jurisdiction of this Honorable Court is invoked pursuant to the provisions of 28 U.S.C. 1257(3), viz., a state court has decided a federal question in a way that conflicts with applicable decisions of this Court.

CONSTITUTIONAL PROVISIONS

Constitution of the United States

Article XIV, Section 1

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce a law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article V

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal cases to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Proscription against debtor's prisons.

STATEMENT OF THE CASE

The trial judge found and entered an order of monetary sanction without consideration of ability to pay under penalty of six months confinement commencing in four days if not then paid, confinment to abrogate upon payment in full.

The facts are that Petitioner presented uncontroverted evidence of his total inability to pay the seminal sanction which had lead to the secondary sanction and the trial judge declared in his ruling that financial inability to comply with the seminal sanction (or the secondary sanction for that matter) need not be considered by the court.

Petitioner objected and appealed the issues of (a) no consideration by the court of Petitioner's inability to pay and (b)

joining non-payment of the secondary sanction with confinement, i.e., a debtor's prison ruling.

The seminal and secondary sanctions were founded in monetary punishment based on attorneys' fees.

REASONS FOR GRANTING THE WRIT

WHETHER PETITIONER CAN BE SANCTIONED FOR NON-PAYMENT OF A SANCTION ORDER AND SENTENCED TO A JAIL TERM FOR NON-PAYMENT OF THE SECONDARY MONETARY SANCTION WITHOUT CONSIDERATION OF HIS ABILITY TO PAY.

In Mattison v. Dallas Carrier Corporation, 947F.2d95(4th Cir. 1991) the Court held that South Carolina's law for awarding punitive damages denied due process because of the lack of meaningful standards. In Johnson v. Hugo's Skateway, Inc. 974 F.2d1408(4th Cir. 1992) and 974 F.2d 1338, the Court found that Virginia's law did not comport with due process, viz.,

"...the ability of the defendant to pay any punitive award entered should be considered." Both of these two cases followed this Honorable Court's decision in Pacific Mutual Life Insurance Co. v. Haslip, 111 S.Ct. 1032(1991).

The trial court stated at page 144, line 13 of the transcript of the May 6, 1993 punitive sanction hearing, "His difficult financial situation does not justify his non-payment."

The court in Harmon v. O'Keefe (Doumar) No. 2:92cv414, May 27, 1993, USDC at Norfolk, Va. VLW 093-3-130, also required consideration of a contemnor's limited financial resources and reasonable satisfaction of the intent of Rule 11 (FRCP)

The court in U. S. ex rel. Griffin v. Martin, 409 F.2d 1300 (1969) stated that

financial ability to comply with an order need be considered in order to sentence defendant to jail for contempt for not paying pursuant to court order.

The court in Butcher v. Coats, 1 Dall. (U.S.) 340, 1 L. Ed. 166 (1788) stated,

> "It is true tht the inability of an alleged contemner, without fault on his part, to render obedience to an order of court, is a good defense to a charge of contempt."

Debtors' prisons have been long outlawed in Virginia and throughout the United States. One of the reasons for that change in legal thinking in 1854 was that a person unable to pay certinly can't improve his inability in prison. Inability to pay is a good defense to contempt.

The court in Exparte Silvia (Cr. 519) (Supreme Court of California, Jan. 17, 1899) 55 Pac Rptr 988, stated that one

imprisoned for contempt for failing to pay alimony will be released on habeas corpus where the order for his imprisonment does not show that he was able to pay.

On a requirement for a determination of ability to pay in the face of a defense founded in willingness but legitimate inability to pay, see also Kidd and Others v. Virginia Safe Deposit and Trust Corporation and others, 113 VA 612 (1912), Jim Laing v. Commonwealth of Virginia, 205 VA 511, (1964), and Branch v. Branch, 144 VA 244 (1926)

In the instant Petition, the trial court apparently made a determination of inability to pay and then concluded further that it is irrelevant and ordered the payment of an exhorbitant amount to be paid over that weekend under the threat of six months jail.

Consideration of circumstances beyond the contemner's control is also written into the U. S. Code for collection of taxes for the same reason, i.e., the illegality of debtors' prisons, viz., 26 USCA 7215(b)(2).

Petitioner before the May 6, 1993 trial court testified as to his finances and submitted several exhibits demonstrating an inability to pay, all of which were accepted by the court and uncontroverted.

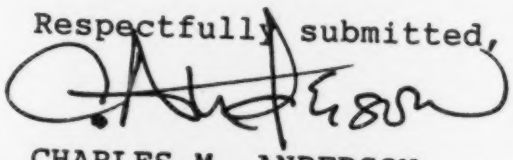
CONCLUSION

Thus the trial court's May 6, 1993 ruling was illegal in that it failed to properly consider ability to pay either sanction and, with the provision for confinement, amounted to a sentence of a debtor's prison.

Petitioner respectfully requests

that a writ of certiorari to the Virginia Supreme Court be granted in this cause and that their decision be reversed.

Respectfully submitted,



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APPENDIX

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VIRGINIA: In the Supreme Court of Virginia at the Supreme Court Building in the City of Richmond on Monday the 1st day of November, 1993.

Charles M. Anderson, Appellant,
against Record No. 931055
Circuit Court No. L96413

Marc A. Busman, et al., Appellees

From the Circuit Court of Fairfax.

Upon review of the record in this case and consideration of the arguments submitted in support of and in opposition to the granting of an appeal, the Court is of the opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal. The Court also denies the motion to dismiss filed by appellee Bruce Eells and the motion to quash filed by the appellant.

VIRGINIA: In the Supreme Court of Virginia at the Supreme Court Building in the City of Richmond on Friday the 8th day of April, 1994.

Charles M. Anderson, Appellant,
agianst Circuit Court No. 96413

Marc Busman, et al., Appellees.

From the Circuit Court of Fairfax County

On March 1, 1994 came the appllees, in proper person and by counsel, and filed a motion to dismiss and for sanctions in this case.

Thereupon cmae Charles M. Anderson, in proper person, and filed a reply to said motion.

On consideration whereof, the motion to dismiss is granted. On further consideration whereof, the motion for sanctions is denied.

VIRGINIA: In the Circuit Court for
Fairfax County

CHARLES M. ANDRSON,

Plaintiff,

vs.

L96413

MARC BUSMAN, et al,

Defendants.

TRANSCRIPTION

Rule to Show Cause Hearing

before the Honorable Richard J. Jamborsky
Judge

May 6, 1993

By Scribes, Inc.
6218 Rolling Rd., Suite 15
Springfield, VA. 22153
(703) 644-5037

At Page 144, Lines 1- - 14:

"Mr. Anderson owes $1,650 as it relates to the non-payment of Judge Stevens' order. Mr. Anderson has not yet, as of this date, purged himself of the civil contempt. His difficult financial situation does not justify his non-payment."

VIRGINIA: In the Circuit Court of
Fairfax County

CHARLES M. ANDERSON,

Plaintiff,

vs. LAW NO. 96413

MARC A. BUSMAN, et al,

Defendants

ORDER

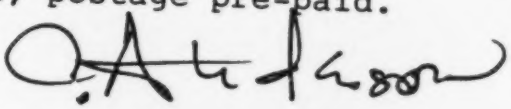
in part:

"It is therefore, ordered and adjudged that Charles M. Anderson is in civil contempt and may purge himself of that civil contempt by making payment of $8268 to Bruce R. Eells and by making payment in the amount of $2500 to Neville Crenshaw, counsel for Mark A. Busman, et al on or before 4 PM on May 10, 1993. Otherwise, he shall report to the Fairfax County Adult Detention Center and remain there for a period not to exceed six months or until he makes the payments;"

dated May 6, 1993 /s/ Richard J. Jamborsky
Judge

CERTIFICATE OF SERVICE

I MAILED a copy of this Petition to Neville Crenshaw, counsel for all Respondants, at Suite 456, 11350 Random Hills Road, FAirfax, Virginia 22030 (ph: (703) 352-7200) except Bruce Eells, pro se, to whom I mailed a copy at No. 214, 2000 N. Adams St., Arlington, VA. 22201 (ph: (703) 914-0025) on July 6, 1994.by first class U. S. Mail, postage pre-paid.



CHARLES M. ANDERSON
Petitioner Pro Se